

**REMARKS**

Claims 11, 13, 14, 17, 19, 20, 22 and 38-41 have been amended. Claims 15 and 16 have been cancelled without prejudice or disclaimer. Claims 11-14, 17-20, 22-24 and 38-41 are pending and under consideration. Claims 11 and 38-41 are the independent claims. No new matter is presented in this Amendment.

**EXAMINER INTERVIEW:**

Based on review of the Examiner's Interview Summary dated August 18, 2008, Applicants agree that the statement provided therein is true and accurate. The claims have been amended as discussed during the interview and to recite in better form the features of the invention.

**REJECTIONS UNDER 35 U.S.C. §112:**

Claim 22 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 22 has been amended to correct the minor informality noted by the Examiner.

Accordingly, Applicants respectfully request that the rejection of claim 22 be withdrawn.

**REJECTIONS UNDER 35 U.S.C. §103:**

Claims 11-20, 24 and 39 are rejected under 35 U.S.C. §103(a) as being unpatentable over JP 9-171813 in view of Gao et al. (U.S. Pre-Grant Publication No. 2002/0127175).

Regarding the rejection of independent claim 11, it is noted that claim 11 recites a method of preparing a positive active material for a rechargeable lithium battery comprising: coating at least one lithiated compound with an organic solution of coating material source, the organic solution prepared by adding a coating material source to an organic solvent forming a mixture, to produce a coated lithiated compound; and drying the coated lithiated compound at a temperature between 60°C to 100°C forming a surface treatment layer on the coated lithiated compound without further heat-treating the dried coated lithiated compound, wherein the surface treatment layer includes a coating element-included hydroxide, oxyhydroxide, oxycarbonate,

hydroxycarbonate or a mixture thereof, and wherein the at least one lithiated compound is prepared by mixing a lithium source, a metal source, and a solvent and the mixture is heat-treated twice.

The Office Action relies on JP '813 for some of the teachings of claim 11 and in particular states that the active material taught by JP '813 is made by a process of dissolving aluminum hydroxide in an aqueous solution, coating the active material and drying the coated compound. In other words, JP '813 teaches coating the compound with an aqueous solution of coating material source. Contrary to JP '813 independent claim 11 now recites coating at least one lithiated compound with an organic solution of coating material source prepared by adding a coating material source to an organic solvent to form a mixture. In other words, the organic solution does not include an aqueous solution, as taught by JP '813.

Therefore, Applicants respectfully assert that JP '813 fails to teach or suggest, at least, this novel feature of independent claim 11.

Gao, on the other hand, discloses coating a compound with cobalt and dopant source compounds prepared as a solution in a solvent such as water (paragraph [0034]). Therefore, Gao also discloses an aqueous solution.

As noted above, independent claim 11 recites coating at least one lithiated compound with an organic solution of coating material source prepared by adding a coating material source to an organic solvent to form a mixture. That is, the organic solution does not require an aqueous solution as Gao.

Therefore, Applicants respectfully assert that Gao fails to cure the deficiencies of the JP '813 reference.

Accordingly, Applicants respectfully assert that the rejection of claim 11 under 35 U.S.C. §103(a) should be withdrawn because neither the JP '813 reference nor Gao, whether taken singly or combined, teach or suggest each feature of independent claim 11.

Regarding the rejections of independent claim 39, it is noted that this claim recites some substantially similar features as claim 11. Thus, the rejection of this claim is also traversed for substantially the same reasons set forth above.

Furthermore, Applicants respectfully assert that dependent claims 12-14, 17-20 and 24 are allowable at least because of their dependency from claim 11, and because they include additional features which are not taught or suggested by the prior art. Therefore, it is respectfully submitted that claims 20 and 24 also distinguish over the prior art.

Regarding the rejection of claims 15 and 16, it is noted that these claims have been cancelled without prejudice or disclaimer. Accordingly, the rejection of these claims is moot.

Claims 22, 23, 38 and 40 are rejected under 35 U.S.C. §103(a) as being unpatentable over JP 9-171813 in view of Gao et al. (U.S. Pre-Grant Publication No. 2002/0127175) as applied to claims 11-20, 24 and 39 above, and further in view of Maegawa et al. (U.S. Patent No. 6,383,235).

Initially it is noted that independent claims 38 and 40 recite some substantially similar features as claim 11, and as noted above, neither the JP '813 reference nor Gao, whether taken singly or combined, teach or suggest, the novel feature recited in claims 38 and 40. In particular, the JP '813 reference and Gao fail to teach or suggest coating at least one lithiated compound with an organic solution of coating material source to produce a coated lithiated compound. Thus, the rejection of claims 38 and 40 is also traversed for substantially the same reasons set forth above.

Maegawa, on the other hand, is relied upon for a teaching of features other than those of preparing the compound by mixing a lithium source, a metal source, and a solvent and heat-treating the mixture twice. In particular, Maegawa is relied upon solely for a teaching of a spray-drying method and thus fails to cure the deficiencies of the JP '813 reference and Gao.

Accordingly, Applicants respectfully assert that the rejection of claims 38 and 40 under 35 U.S.C. § 103(a) should be withdrawn because neither the JP '813 reference, Gao nor Maegawa, whether taken singly or combined, teach or suggest each feature of independent claims 38 and 40.

Regarding the rejections of independent claims 22 and 23, Applicants respectfully assert that the rejection of these claims under 35 U.S.C. § 103(a) should be withdrawn at least because of their dependency from claim 11 and the reasons set forth above, and because the dependent claims include additional features which are not taught or suggested by the prior art. Therefore, it is respectfully submitted that claims 22 and 23 also distinguish over the prior art.

Claim 41 is rejected under 35 U.S.C. §103(a) as being unpatentable over JP 9-171813 in view of Gao et al. (U.S. Pre-Grant Publication No. 2002/0127175) as applied to claims 11-20, 24 and 39 above, and further in view of Shindo et al. (U.S. Patent No. 6,045,947).

Regarding the rejection of independent claim 41, it is noted that claim 41 also recites

coating at least one lithiated compound with an organic solution of coating material source prepared by adding a coating material source to an organic solvent to form a mixture, to produce a coated lithiated compound.

As noted above, neither the JP '813 reference nor Gao, whether taken singly or combined, teach or suggest this novel feature of the claim.

Shindo, on the other hand, is relied upon for a teaching of features other than those of coating at least one lithiated compound with an organic solution of coating material source to produce a coated lithiated compound. In particular, Shindo is relied upon solely for a teaching of a particle size. Therefore, Shindo fails to cure the deficiencies of the JP '813 reference and of Gao.

Accordingly, Applicants respectfully assert that the rejection of claim 41 under 35 U.S.C. §103(a) should be withdrawn because neither the JP '813 reference, Gao nor Shindo, whether taken singly or combined, teach or suggest each feature of independent claim 41.

#### **DOUBLE PATENTING:**

Claims 11-20, 24 and 39 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of U.S. Patent Nos. 6,753,111, 6,797,435, and 6,846,592 in view of Gao et al.

Since claims 11-20, 24 and 39 of the instant application have not yet been indicated as allowable, it is believed that any submission of a Terminal Disclaimer would be premature.

As such, it is respectfully requested that Applicants be allowed to address any obviousness-type double patenting issues remaining once the rejections of the claims under 35 U.S.C. §103 are resolved.

Claims 22, 23, 38 and 40 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of U.S. Patent Nos. 6,753,111, 6,797,435, and 6,846,592 in view of Gao et al. and further in view of Maegawa et al.

Since claims 22, 23, 38 and 40 of the instant application have not yet been indicated as allowable, it is believed that any submission of a Terminal Disclaimer would be premature.

As such, it is respectfully requested that Applicants be allowed to address any obviousness-type double patenting issues remaining once the rejections of the claims under 35 U.S.C. §103 are resolved.

Claim 41 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of U.S. Patent Nos. 6,753,111, 6,797,435, and 6,846,592 in view of Gao et al as applied above and further in view of Shindo et al.

Since claim 41 of the instant application has not yet been indicated as allowable, it is believed that any submission of a Terminal Disclaimer would be premature.

As such, it is respectfully requested that Applicants be allowed to address any obviousness-type double patenting issues remaining once the rejection of the claims under 35 U.S.C. §103 are resolved.

**CONCLUSION:**

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 503333.

Respectfully submitted,

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